

### REMARKS

Claim 16 is amended, no claims are canceled, and no claims are added; as a result, claims 1-16 are now pending in this application.

Claim 16 was amended to correct an obvious typographical error, changing the dependency of claim 16 from "11" to "12." The amendment to claim 16 was not made to overcome any prior art rejection, and no new matter was added through the amendment of claim 16.

### §102 Rejection of the Claims

Claims 6-9 and 12-14 were rejected under 35 U.S.C. § 102(b) as being anticipated by Huang (U.S. 6,009,521). Applicant respectfully traverses the rejection of claims 6-9 and 12-14.

### Independent claims 6 and 12

Claim 6 recites, "a latch for turning off said bootstrap processor." Claim 12 recites, "a latch for turning said bootstrap processor off." The Office Action relies on latch 18 of Fig. 2 in Huang in an attempt to establish these elements. However, Huang at column 4, lines 8-11 states, "The system processor 16 performs a watch dog timer function in which it initiates its own reset of the working processors P0, P1, P2, P3 via OR gate 22, which also receives the system reset signal RESET#." Thus, Huang discloses using system processor 16 via OR gate 22 to initiate a reset, and fails to teach a latch for turning off said bootstrap processor as recited in claim 6, and further, fails to teach a latch for turning said bootstrap processor off as recited in claim 12. Hence, Huang fails to teach each of the elements of claims 6 and 12. Thus, the Office Action fails to state a *prima facie* case of anticipation with respect to claims 6 and 12. Therefore, Applicant respectfully requests withdrawal of the rejection and reconsideration and allowance of claims 6 and 12.

### Dependent claims 7-9 and 13-14

Claims 7-9 are dependent on claim 6. Claims 13-14 are dependent on claim 12. For reasons analogous to those stated above and additional elements in the claims, the Office Action

fails to state a *prima facie* case of anticipation with respect to claims 7-9 and 13-14. Therefore, Applicant respectfully requests withdrawal of the rejection and reconsideration and allowance of claims 7-9 and 13-14.

§103 Rejection of the Claims

Claims 10-11 and 15-16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Huang (U.S. 6,009,521). Applicant respectfully traverses the rejection of claims 10-11 and 15-16.

Claims 10 and 11

Claim 10 recites, "wherein said control unit includes a system I/O chip." The Office Action on page 3 admits that Huang fails to teach said control unit includes a system I/O chip. Applicant agrees. However, the Office Action on page 3 goes on to state,

Official notice is taken that both the concept and the advantages of I/O chip is old and well known in the art.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Huang to include an I/O chip, because it provides I/O terminals and control logic for commonly used legacy peripheral devices such as keyboards, IDE drives, IEEE parallel ports, serial communication ports.

Applicant respectfully disagrees with each of these statements, and objects to the taking of official notice in a single reference obviousness rejection; and pursuant to M.P.E.P. § 2144.03, Applicant traverses the assertion of official notice and requests that the Examiner cite a reference that teaches the missing elements. If the Examiner cannot cite a reference that teaches the missing elements, Applicant respectfully requests that the Examiner provide an affidavit describing how the missing elements are present in the prior art. If the Examiner cannot cite a reference or provide an affidavit, Applicant requests withdrawal of the rejection and reconsideration and allowance of claim 10.

Claim 11 recites, "wherein the apparatus is part of an appliance server management system." The Office Action on page 3 admits that Huang fails to teach the apparatus is part of an appliance server managements system. Applicant agrees. However, the Office Action on page 4, first paragraph, states,

However, Examiner asserts that these types of limitations are considered field of use, and are not patentably distinct. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the method of Huang in a appliance Server management System, because if a bootstrap processor failed the system will assign a new working processor as the bootstrap processor [see Huang. col. 1, lines 40-60]."

Applicant disagrees with each of these statements. Further, M.P.E.P. § 2142 states,

In order for the Examiner to establish a *prima facie* case of obviousness, three base criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. M.P.E.P. § 2142 (citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir. 1991)).  
[Emphasis Added]

Since the Office Action admits that Huang fails to teach the elements recited in claim 11, Applicant assumes the Examiner is taking official notice of these elements. Applicant objects to the taking of official notice in a single reference obviousness rejection; and pursuant to M.P.E.P. § 2144.03, Applicant traverses the assertion of official notice and requests that the Examiner cite a reference that teaches the missing elements. If the Examiner cannot cite a reference that teaches the missing elements, Applicant respectfully requests that the Examiner provide an affidavit describing how the missing elements are present in the prior art. If the Examiner cannot cite a reference or provide an affidavit, Applicant requests withdrawal of the rejection and reconsideration and allowance of claim 11.

Further, claims 10 and 11 are dependent on claim 6. Applicant believes they have established that the Huang patent does not anticipate independent claim 6. The Office Action fails to cite any other documents that teach or suggest the elements of claims 10 and 11 missing from Huang. Thus, the Office Action fails to cite any documents, either alone or in combination, that teach or suggest all of the elements of claims 10 and 11. Therefore, the Office Action fails to state a *prima facie* of obviousness with respect to claims 10 and 11.

For at least the reasons argued above, Applicant respectfully requests withdrawal of the rejection and reconsideration and allowance of claims 10 and 11.

Claims 15 and 16

Claim 15 recites, "wherein the system is part of an appliance server management system." The Office Action on page 3 admits that Huang fails to teach the apparatus is part of an appliance server managements system. Applicant agrees. However, the Office Action on page 4, first paragraph, makes the same statements regarding claim 15 as was quoted above with regards to claim 11. For the same reasons argued above with regards to claim 11, Applicant respectfully disagrees with each of the statements on page 4 of the Office Action as applied to the rejection of claim 15. Further, Applicant objects to the taking of official notice in a single reference obviousness rejection; and pursuant to M.P.E.P. § 2144.03, Applicant traverses the assertion of official notice and requests that the Examiner cite a reference that teaches the missing elements as recited in claim 15. If the Examiner cannot cite a reference that teaches the missing elements, Applicant respectfully requests that the Examiner provide an affidavit describing how the missing elements are present in the prior art. If the Examiner cannot cite a reference or provide an affidavit, Applicant requests withdrawal of the rejection and reconsideration and allowance of claim 15.

In addition, claims 15 and claim 16 (as claim 16 is amended) are dependent on claim 12. Applicant believes they have established that the Huang patent does not anticipate independent claim 12. The Office Action fails to cite any other document that teach or suggest the elements of claims 15 and 16 that are missing from Huang. Thus, the Office Action fails to cite any documents, either alone or in combination, that teach or suggest all of the elements of claims 15 and 16, and so the Office Action fails to state a *prima facie* of obviousness with respect to claims 15 and 16.

For at least the reasons argued above, Applicant respectfully requests withdrawal of the rejection and reconsideration and allowance of claims 15 and 16.

Claims 1-5

Claims 1-5 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Natu (U.S. 5,790,850) in view of Huang (U.S. 6,009,521). Applicant respectfully traverses the rejection of claims 1-5.

As noted above, M.P.E.P. § 2142 states that there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. In an attempt to meet this requirement, the Office Action on page 5 states, "It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Natu to include setting a latch for disabling bootstrap processor if the testing indicates failure, because it identifies and labels the failed bootstrap processor as inoperative [*see* Huang, col. 5, lines 23-28]." Applicant disagrees with these statements.

As argued above with regards to claims 6 and 12, Huang fails to disclose "setting a latch for disabling bootstrap processor" as stated in the Office Action. Instead, as noted above, Huang at column 4, lines 8-11 states, "The system processor 16 performs a watch dog timer function in which it initiates its own reset of the working processors P0, P1, P2, P3 via OR gate 22, which also receives the system reset signal RESET#." Since Huang does not teach the elements of setting a latch for disabling a bootstrap processor, the Office Action's statements made on page 5 in support of forming the combination of Huang with Natu are not supported by the documents. Thus, the Office Action fails to meet the requirement that there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. By failing to meet these requirements, the Office Action fails to state a *prima facie* case of obviousness with respect to claim 1-5.

With respect to claim 2, the Office Action on page 5 states that Huang "teaches a timer which indicates a failure if the bootstrap processor is not reset within a predetermined period [*step 117 of Fig. 3, col. 2, lines 26-31, col. 4, lines 66 thru col. 5, line 3, col. 6. lines 4-6*]. [Emphasis Added] Applicant disagrees. Huang at column 2, lines 26-31 states,

As part of the embodiment, a watch dog timer function may be further included. This timer is then reset upon finishing bootstrapping the multiprocessor computer. Should the timer time-out after measuring a predetermined amount of time, however, the system management processor assumes a bootstrap failure. Accordingly, the system management processor assigns a new working processor as the boot strap processor utilizing the inventive switch circuit. [Emphasis Added] (See Huang at column 2, lines 26-31)

Thus, Huang discusses *assuming* a bootstrap failure if a watchdog timer times out, but fails to teach or suggest a timer indicating a failure if the bootstrap processor in not reset. Since Huang does not recite a timer that indicates a failure if the bootstrap processor in not reset, the statements made in the Office Action on page 5, "It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Natu to include a timer which indicates a failure if the bootstrap processor is not reset with a predetermined period, . . . " is not supported by the cited documents. Thus, the Office Action fails to meet the requirement that there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. By failing to meet these requirements, the Office Action fails to state a *prima facie* case of obviousness with respect to claim 2.

In addition, the Office Action fails to state a *prima facie* case of obviousness even if the proposed combination of Huang with Natu were made with respect to claims 1-5, because the proposed combination fails to teach or suggest each of the elements of claims 1-5. Claim 1 recites, "setting a latch for disabling said bootstrap processor if the testing indicates a failure." For reasons analogous to those argued above with regards to claims 6 and 12, Huang fails to teach or suggest these elements. Further, Natu fails to teach or suggest these elements missing in Huang. Instead, Natu at column 2, lines 64-66, recites, "The BSP is determined to have failed if its status bits reflect that it has failed during the current boot, or any previous boot." Thus, Natu rather than "disabling said bootstrap processor" only notes that "the BSP is determined to have failed if its status bits reflect that it has failed." Hence, neither Huang nor Natu, either alone or in combination, teach or suggest all of the elements of claim 1. Therefore, the Office Action fails to state a *prima facie* case of obviousness with respect to claim 1.

Claims 2-5 depend from claim 1, and therefore include all of the elements of claim 1. Thus, neither Huang nor Natu, either alone or in combination, teach or suggest all of the elements of claims 2-5, and so the Office Action fails to state a *prima facie* case of obviousness with respect to claims 2-5.

Further, dependent claims 2-5 include additional elements not taught or suggested by the proposed combination of Huang and Natu. For example, claim 2 recites, "wherein testing the bootstrap processor comprises using a timer which indicates a failure if the bootstrap processor is not reset within a predetermined time." As noted above, Huang fails to teach or suggest using a timer to indicate a failure if the bootstrap processor is not reset within a predetermined time, as recited in claim 2. Applicant is unable to find in Natu any teaching or suggestion of using a timer to indicate a failure if the bootstrap processor is not reset within a predetermined time, as recited in claim 2. Thus, the proposed combination of Huang and Natu fails to teach or suggest all of the elements recited in claim 2.

For at least the reasons argued above, Applicant respectfully requests withdrawal of the rejection and reconsideration and allowance of claims 1-5.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney ((612) 373-6904) to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

SON H. LAM

By his Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.  
Attorneys for Intel Corporation  
P.O. Box 2938  
Minneapolis, Minnesota 55402  
(612) 373-6904

Date June 27, 2005 By Daniel J. Kluth  
Daniel J. Kluth  
Reg. No. 32,146

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